

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

Case No. *2013-830*

13 **LUCILLE ERB CANO,**
14 **AKA LUCILLE ANN ERB**

STATEMENT OF ISSUES

15 **Registered Nurse License Applicant**

16 **Respondent.**

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about May 29, 2012, the Board of Registered Nursing, Department of
23 Consumer Affairs received an application for a Registered Nurse License from Lucille Erb Cano,
24 also known as Lucille Ann Erb (Respondent). On or about May 16, 2012, Lucille Erb Cano
25 certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on November 26, 2012.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3) (A) Done any act that if done by a licentiate of the business or profession
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the
4 crime or act is substantially related to the qualifications, functions, or duties of the
5 business or profession for which application is made.

6 (b) Notwithstanding any other provision of this code, no person shall be denied
7 a license solely on the basis that he or she has been convicted of a felony if he or she
8 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
9 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
10 convicted of a misdemeanor if he or she has met all applicable requirements of the
11 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
12 person when considering the denial of a license under subdivision (a) of Section 482.

13 (c) A board may deny a license regulated by this code on the ground that the
14 applicant knowingly made a false statement of fact required to be revealed in the
15 application for the license.

16 7. Section 482 of the Code states:

17 Each board under the provisions of this code shall develop criteria to evaluate
18 the rehabilitation of a person when:

19 (a) Considering the denial of a license by the board under Section 480; or

20 (b) Considering suspension or revocation of a license under Section 490.

21 Each board shall take into account all competent evidence of rehabilitation
22 furnished by the applicant or licensee.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or to
26 suspend or revoke a license or otherwise take disciplinary action against a person who
27 holds a license, upon the ground that the applicant or the licensee has been convicted
28 of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

9. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or
deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the
following:

1
2 (f) Conviction of a felony or of any offense substantially related to the
3 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

4
5 10. Section 2762 of the Code states:

6 In addition to other acts constituting unprofessional conduct within the meaning
7 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

8
9 (b) Use any controlled substance as defined in Division 10 (commencing with
10 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
11 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
dangerous or injurious to himself or herself, any other person, or the public or to the
12 extent that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

13 (c) Be convicted of a criminal offense involving the prescription, consumption,
14 or self-administration of any of the substances described in subdivisions (a) and (b) of
this section, or the possession of, or falsification of a record pertaining to, the
15 substances described in subdivision (a) of this section, in which event the record of
the conviction is conclusive evidence thereof.

16
17 11. Section 2765 of the Code states:

18 A plea or verdict of guilty or a conviction following a plea of nolo contendere
19 made to a charge substantially related to the qualifications, functions and duties of a
registered nurse is deemed to be a conviction within the meaning of this article. The
20 board may order the license or certificate suspended or revoked, or may decline to
issue a license or certificate, when the time for appeal has elapsed, or the judgment of
21 conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under the
22 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
23 guilty, or dismissing the accusation, information or indictment.

24 REGULATORY PROVISIONS

25 12. California Code of Regulations, title 16, section 1444 states:

26 A conviction or act shall be considered to be substantially related to the
27 qualifications, functions or duties of a registered nurse if to a substantial degree it
evidences the present or potential unfitness of a registered nurse to practice in a
28 manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

1 (a) Assaultive or abusive conduct including, but not limited to, those violations
2 listed in subdivision (d) of Penal Code Section 11160.

3 (b) Failure to comply with any mandatory reporting requirements.

4 (c) Theft, dishonesty, fraud, or deceit.

5 (d) Any conviction or act subject to an order of registration pursuant to Section
6 290 of the Penal Code.

7 13. California Code of Regulations, title 16, section 1445 states:

8 (a) When considering the denial of a license under Section 480 of the code,
9 the board, in evaluating the rehabilitation of the applicant and his/her present
10 eligibility for a license will consider the following criteria:

11 (1) The nature and severity of the act(s) or crime(s) under consideration as
12 grounds for denial.

13 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
14 under consideration as grounds for denial which also could be considered as grounds
15 for denial under Section 480 of the code.

16 (3) The time that has elapsed since commission of the act(s) or crime(s)
17 referred to in subdivision (1) or (2).

18 (4) The extent to which the applicant has complied with any terms of parole,
19 probation, restitution, or any other sanctions lawfully imposed against the applicant.

20 (5) Evidence, if any, of rehabilitation submitted by the applicant.

21

22 **FIRST CAUSE FOR DENIAL OF APPLICATION**

23 **(January 28, 2009 Criminal Conviction for DUI on August 31, 2008)**

24 14. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
25 and 2761, subdivision (f) of the Code in that she was convicted of a crime that is substantially
26 related to the qualifications, duties, and functions of a registered nurse. The circumstances are as
27 follows:

28 a. On or about January 28, 2009, in a criminal proceeding entitled *People of
the State of California v. Lucille E. Cano*, in San Diego County Superior Court, case number
CN253392, Respondent was convicted on her plea of guilty to violating Vehicle Code section
23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or
higher, a misdemeanor. The court found true the special allegation that Respondent's BAC was

1 .15 percent or more, pursuant to Vehicle Code section 23578. The court certified Respondent's
2 BAC as .24 percent.

3 b. As a result of the conviction, on or about January 28, 2009, Respondent
4 was sentenced to serve one day in the custody of the sheriff, and granted five years summary
5 probation. Respondent was ordered to complete 10 days in the Public Service Work Program,
6 attend and complete a nine-month First Conviction Program and a MADD Victim Impact Panel
7 session, pay fees, fines and restitution, and comply with DUI probation terms.

8 c. The circumstances that led to the conviction are that on or about the
9 evening of August 31, 2008, a deputy with the San Diego County Sheriff's Department responded
10 to a call of a single vehicle roll over collision in Encinitas. Upon arrival at the scene, the deputy
11 found Respondent's SUV on its side partially blocking the southbound travel lane.
12 Approximately five feet to the south of Respondent's vehicle, the deputy found two small empty
13 plastic 50 ml bottles of vodka. A bystander who had helped Respondent from her vehicle told the
14 deputy that Respondent had offered him \$10,000 if he would take the blame for the accident.
15 Respondent was already being treated by paramedics. Respondent claimed she drove off the side
16 of the road after she momentarily looked down to light a cigarette. The deputy noted that there
17 was a strong odor of an alcoholic beverage emitting from Respondent's breath and body, and her
18 eyes were bloodshot and watery. Respondent was arrested for driving under the influence before
19 she was taken to a local emergency room to be treated for complaints of pain to her back and
20 pelvis. Two samples of blood were drawn from Respondent at the hospital.

21 **SECOND CAUSE FOR DENIAL OF APPLICATION**

22 **(Dangerous Use of Alcohol)**

23 15. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
24 of the Code for unprofessional conduct in that on or about August 31, 2008, Respondent used
25 alcoholic beverages to an extent or in a manner that was dangerous and injurious to herself and
26 the public when she operated a motor vehicle while significantly impaired by alcohol and caused
27 a collision, as detailed in paragraph 14, above, which would be a ground for discipline under
28 section 2762, subdivision (b) of the Code for a licensed registered nurse.

1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Alcohol-Related Conviction)**


3 16. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
4 of the Code for unprofessional conduct in that on or about January 28, 2009, Respondent was
5 convicted of an alcohol-related offense, as detailed in paragraph 14, above, which would be a
6 ground for discipline under section 2762, subdivision (c) of the Code for a licensed registered
7 nurse.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Registered Nursing issue a decision:

- 11 1. Denying the application of Lucille Erb Cano, also known as Lucille Ann Erb, for a
12 Registered Nurse License;
13 2. Taking such other and further action as deemed necessary and proper.

14
15 DATED: March 27, 2013


16 LOUISE R. BAILEY, M.ED., RN
17 Executive Officer
18 Board of Registered Nursing
19 Department of Consumer Affairs
20 State of California
21 Complainant

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